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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,344	09/10/2003	Darin Barri	MAT 3H5	5151
7590 Konstantine Diamond, Esq. Mattel, Inc 333 Continental Boulevard Mail Stop M1-1518 El Segundo, CA 90245				
01/06/2009				
EXAMINER				
CEGIELNIK, URSZULA M				
ART UNIT		PAPER NUMBER		
3711				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/660,344

## Applicant(s)

BARRI ET AL.

## Examiner

Urszula M. Cegielnik

## Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 33-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-35, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheaton (US Patent No. 5,245,130).

Wheaton, in the broadest reasonable manner of interpretation, discloses a body; a breath sensor (57), the breath sensor being coupled to the body at a first location, the breath sensor being configured to detect the presence of breath proximate to the first location by detecting the value of humidity (i.e. a person's breath when blowing) proximate to the body, the breath sensor being configured to generate an electrical characteristic relative to the value detected by the breath sensor; a reference sensor (59), the reference sensor being coupled to the body at a second location, the second location being spaced apart from the first location, the reference sensor in the second location being protected from any breath to which the breath sensor at the first location is exposed, the reference sensor being configured to detect the value of humidity proximate to the body and to generate its own electrical characteristic relative to the value detected by the reference sensor (the sensor 59 is fully capable of performing the function of detecting the value of humidity and generating an electrical characteristic); an output device, the output device being configured to produce an output; and a

processor (76), the processor being operatively coupled to the breath sensor, to the reference sensor, and to the output device; the processor being configured to compare the electrical characteristic of the breath sensor to the electrical characteristic of the reference sensor, the processor being configured to activate the output device if the electrical characteristics of the breath and reference sensors differ by a predetermined amount (col. 8, lines 32-36).

The recitation "a reference sensor...configured to detect the value of humidity proximate to the body and to generate its own electrical characteristic relative to the value detected by the reference sensor..." (for example only) is directed to the intended use and there are no structural limitations directed to the reference sensor as claimed. Applicant needs to distinguish over the prior art with structural limitations (*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997)

Claims 33-41, and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov US Patent Publication No. 2001/0041496) in view of Wheaton (US Patent No. 5,245,130).

Smirnov discloses a toy comprising a breath sensor (paragraph 0077, lines 1-3); an output device (paragraph 0033, lines 1-3); the breath sensor inherently has an electrical characteristic in order to operate in conjunction with the processor; and a processor (21) operatively coupled to the breath sensor (paragraph 0077, lines 1-7) and to the output device (paragraph 0033, lines 1-3) wherein the processor (21) is adapted to cause the toy to interact with a user (paragraph 0045, lines 1-12); the processor (21) is further adapted to cause the toy to exhibit a behavior in response to user input

(paragraph 0048, lines 1-10); the processor is fully capable of comparing electrical characteristics of sensors, since digital communication makes use of electrical signals; the processor (21) is further adapted to cause the toy to elicit behavior in a user and detect the behavior (paragraph 0048, lines 1-10); the breath sensor includes a humidity sensor (paragraph 0077, lines 1-3); a reference sensor (*paragraph 0077, lines 3-5, providing a corresponding sensor connected to a processor; since the corresponding sensor is connected to a processor [which stores digital values] it is inherently capable of detecting an ambient value*); the reference sensor inherently has an electrical characteristic in order to operate in conjunction with the processor; the breath sensor includes a temperature sensor (5), and the toy is a stuffed figure (*e.g. a teddy bear*); a musical toy (the toy is musical in that songs can be sung) and the at least one transducer produces a musical tone (paragraph 0080, lines 1-3).

Smirnow does not disclose a sensor arrangement having one sensor in a first location and a second sensor in a second location.

Wheaton teaches a musical device that is activated by breath that includes one sensor (57) in a first location and a second sensor (59) in a second location that results in providing output based on the value of the sensors.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sensor arrangement as taught by Wheaton, since such a modification would provide an alternate sensor arrangement.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 above, and further in view of Cook et al. (US Patent No. 3,721,039).

The modified invention of Smirnov lacks the body having at least two channels.

Cook teaches a doll that has two channels that resemble a musical instrument (i.e. an accordion).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two channels as taught by Cook et al., since such a modification would provide an alternate interactive feature.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/umc/  
/Gene Kim/  
Supervisory Patent Examiner, Art Unit 3711